



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERTO ESPINOZA-MEZA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. 07-CV-2288 W
07-CR-0062 W

ORDER DENYING PETITION
FOR HABEAS CORPUS
UNDER 28 U.S.C. 2255 (Cr.
No. 20)

On June 1, 2007 Petitioner Roberto Espinoza-Meza ("Petitioner") entered into a plea agreement with Respondent United States of America ("Respondent" or "Government") regarding Petitioner's arrest and charge for importation of methamphetamine. (Cr. No. 15.) On September 11, 2007, in accordance with the plea, the Court sentenced Petitioner to seventy months. (Cr. No. 19.) Pending before the Court is Petitioner's motion to vacate or reduce his sentence pursuant to 28 U.S.C. § 2255. (Cr. No. 20.) The Court takes the matter under submission and without oral argument. See S.D. Cal. Civ. R. 7.1(d)(1). For the following reasons, the Court **DENIES** Petitioner's motion to vacate.

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1 I. BACKGROUND

2 On June 1, 2007 Petitioner entered into a Plea Agreement with the Government
 3 regarding Petitioner's arrest and charge for importation of methamphetamine. (Cr. No.
 4 15 [hereinafter "Plea Agreement"].) In exchange for certain Government concessions
 5 and a low-end sentencing recommendation, Petitioner agreed to waive any appeal or
 6 collateral attack of his conviction and sentence, so long as the Court did not sentence
 7 Petitioner above the high end of the resulting sentencing guideline range. (Plea
 8 Agreement 8.) Specifically, the Plea Agreement provided:

9 In exchange for the Government's concessions in this plea agreement,
 10 [Petitioner] waives, to the full extent of the law, any right to appeal or to
 11 collaterally attack the conviction and sentence, including any restitution
 12 order, unless the Court imposes a custodial sentence above the greater of
 13 the high end of the guideline range or statutory mandatory minimum term,
 14 if applicable recommended by the Government pursuant to this agreement
 15 at the time of sentencing. ... If defendant believes that Government's
 16 recommendation is not in accord with this agreement, defendant will
 17 object at the time of sentencing; otherwise the objection will be deemed
 18 waived.

19 (Id.)

20 On September 11, 2007, consistent with the Government's recommendation and
 21 plea agreement, the Court sentenced Petitioner to seventy months in prison, which was
 22 the low end of the applicable sentencing guideline range. (Cr. No. 19.) Petitioner does
 23 not argue that he objected to this sentence at the time of sentencing.

24 On December 6, 2007 Petitioner filed this motion to vacate or reduce his
 25 sentence under 28 U.S.C. § 2255, arguing equal protection and due process violations
 26 in the length and conditions of his confinement. (Pet. 2.) On January 2, 2008 the
 27 Court set a briefing schedule, giving the Government until March 14, 2008 to respond
 28 and Petitioner until May 2, 2008 to file his traverse. (Cr. No. 21.) On March 5, 2008
 the Government responded in opposition. To date, the Court has not received any
 traverse by Petitioner, nor has Petitioner requested an extension of time in which to file
 a traverse.

1 **II. LEGAL STANDARD**

2 Under 28 U.S.C. § 2255, a federal sentencing court is authorized to discharge or
 3 re-sentence a defendant if it concludes that “the sentence was imposed in violation of
 4 the Constitution or laws of the United States, or that the court was without jurisdiction
 5 to impose such sentence, or that the sentence was in excess of the maximum authorized
 6 by law, or is otherwise subject to collateral attack.” 28 U.S.C. § 2255. This statute is
 7 intended to alleviate the burden of habeas corpus petitions filed by federal prisoners in
 8 the district of confinement, by providing an equally broad remedy in the more
 9 convenient jurisdiction of the sentencing court. See United States v. Addonizio, 442
 10 U.S. 178, 185 (1979); Hernandez v. Campbell, 204 F.3d 861, 864 n.4 (9th Cir. 1999).

11 The remedy available under § 2255 is as broad and comprehensive as that
 12 provided by a writ of habeas corpus. See United States v. Addonizio, 442 U.S. 178,
 13 184-85 (1979). But this does not encompass all claimed errors in conviction and
 14 sentencing. Id. at 187. A mere error of law does not provide a basis for collateral
 15 attack unless the claimed error “resulted in a complete miscarriage of justice or in a
 16 proceeding inconsistent with the rudimentary demands of fair procedure.” Hamilton
 17 v. United States, 67 F.3d 761, 763-64 (9th Cir. 1995) (quoting United States v.
 18 Timmreck, 441 U.S. 780, 783-84 (1979)).

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20 **III. DISCUSSION**

21 Petitioner apparently argues that his sentence violates equal protection and due
 22 process because he, unlike a United States citizen, cannot take advantage of a drug
 23 program or half-way house while confined. (*Pet.* 2.) Respondent contends that,
 24 whatever Petitioner may argue, he has already waived his right to collaterally attack his
 25 conviction and sentence. (*Respt.’s Opp’n* 3.)

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The Court agrees with Respondent.

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Knowing and voluntary waivers of appellate rights in criminal cases are regularly
 28 enforced. United States v. Nguyen, 235 F.3d 1179, 1182 (9th Cir. 2000). If a waiver

1 of appellate rights was knowing and voluntary, inquiry into the waiver's validity is at an
 2 end. Nguyen, 235 F.3d at 1182. Like the right to bring a direct appeal, the right to
 3 bring a collateral attack is statutory. United States v. Abarca, 985 F.2d 1012, 1014 (9th
 4 Cir. 1993). And, as with the right to appeal, the knowing and voluntary waiver of the
 5 statutory right to collaterally attack a conviction is enforceable. Id.

6 Here, Petitioner in his Plea Agreement waived both his right to appeal and right
 7 to collaterally attack his sentence. (*Plea Agreement* 8.) Because the Court accepted the
 8 Plea Agreement's low-end sentencing recommendation, this condition holds. Nowhere
 9 does Petitioner argue that his waiver was either not knowing or involuntary; to the
 10 contrary, Petitioner initialed each page of the Plea Agreement and signed his full name
 11 to the last page. On June 18, 2007, at his disposition hearing, Petitioner acknowledged
 12 that he signed the Plea Agreement, indicated that he understood the Agreement, and
 13 indicated that he had enough time to talk to his attorney about the Agreement.
 14 (Respt.'s Opp'n, Ex. D at 4-5.) Because Petitioner does not argue that he failed to
 15 execute a knowing and voluntary waiver, and all the evidence indicates otherwise, the
 16 Court finds that Petitioner has waived the right to collaterally attack his sentence.
 17 Accordingly, the Court **DENIES** Petitioner's motion to vacate his sentence under 28
 18 U.S.C. § 2255.

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20 **IV. CONCLUSION**

21 For the foregoing reasons, the Court **DENIES** Petitioner's motion to vacate his
 22 sentence under 28 U.S.C. § 2255.

23 **IT IS SO ORDERED.**

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25 **DATED:** July 8, 2008



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 27 **HON. THOMAS J. WHELAN**
 28 United States District Court
 Southern District of California